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THE ANTI-UNION.

PRICE 2D.

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No. XXVII.

Sunt certi denique fines,
Quos intra citraque nequit, consistere rectum.

THE advocates for the competency of Parliament to enact an Union, boldly assert that their adversaries necessarily run into pure republicanism. I do not feel that such a consequence is fairly imputable to them; but I clearly discern, indeed it is not denied, that the advocates for an Union, are driven to the necessity of maintaining *the competency of Parliament to do every thing which is not physically impossible.*

If by competency such persons mean merely power distinct from right, it is impossible to differ from them. The proposition amounts to this; that Parliament has a power of doing every thing within its power; and is perfectly nugatory and uninstruative.

If they mean that there exists no defined, legal mode, of restraining or resisting the acts of the supreme power, while the constitution exists; I readily subscribe to the *Omni-competency* of Parliament in that sense also. But if they contend that there are no limits set by our constitution to the supreme power, and that it is impossible, without an implied contradiction, to set any such limits, I think it is plain that they confound power and right, and argue as if physical ability, and moral competency, were convertible terms.

Mr. Smith in his pamphlet, page 25, says, "As circumscribed despotism, and limited absolute power are things, of which I find it difficult to conceive an idea, I should think that the authority of Parliament to bind this country to an Union flowed, by inevitable interference, from the principle above cited; and I should smile at their scruples, who declined investigating the utility of a measure, until they should first ascertain whether absolute power was competent to achieve it."

In the passage cited, and indeed from the whole content of his book, it is manifest that he conceives not only that our Parliament, but that the supreme power in every state, must necessarily be invested with a rightful power (all discussion of their physical power is foreign from the subject) to do any act which appears to them to be useful to the community.

Let us try Mr. Smyth's position by some intelligible test. Suppose a number of men having no government or constitution, agree to confer the supreme power upon a senate, for instance; will it be denied that such men may limit the duration of such authority, or establish certain principles, according to which it should govern?

Suppose certain limitations, expressly stipulated and

agreed upon, and that the senate assumes the government, having even individually subscribed the conditions of their appointment, and recognized the limitations of their authority. Between these contracting parties there is no common judge. From the moment the senate is established, it is invested with supreme power. They may commence their career by perpetuating their authority, and violating and annulling all those constitutional barriers which were instituted to restrain them.

Mr. Smith to be consistent, must say, and no doubt, would say, that such a senate would be justifiable in so doing, provided they conceived it to be beneficial to the community which they governed. Now I think it extremely clear, that such a senate would not of themselves, have a right to violate and destroy the constitution of which they were appointed guardians and trustees. The very end of the contract above-stated, was to prevent the exercise of discretion in such a way, and to guard against the possible abuse of the supreme power, by circumscribing the sphere of its operation. But it may be asked, if the legislature so appointed be so limited, is it not misdenominated the supreme power? Does there not result that incongruous monster, circumscribed despotism, or limited absolute power, of which Mr. Smith finds it so difficult to conceive an idea? Perhaps it may be the dullness of my faculties which prevents me from seeing the difficulty of reconciling supreme power with constitutional limitations. Supreme power does not mean to imply omnipotence. It is and must be merely relative. While there does not exist any power equal, or superior, in the constitution, it is justly denominated supreme, and such an epithet may be consistent with many limitations. It should be recollected that in using the word power I constantly mean rightful or justifiable power. Mr. Smith cannot say, that such a senate would have a right to transgress their limits because there is not any sanction in the constitution, or any legal mode of restraining it. He is too sound a moralist to think that every thing is rightfully done which cannot be legally prevented or punished.

I acknowledge that there is not in our constitution, and that there cannot be in any government, any sanction against the violation of such a contract but in the conscience of those who exert the supreme power, and the physical force of those who are the objects of it. When I say this am I preaching rebellion? Am I propagating the doctrines of pure republicanism? Mr. Smith will probably say I am. He will infer it as in page 40, from the assumed right of the people to controul the legislature in certain causes, and from the necessity of leaving to the people the right of determining

whether such a case shall have arisen. The populace (says he in derision) is to resolve itself into a committee of the whole nation, to enquire whether the right of popular despotism has occurred, and by the report of this mob is their title to be ascertained." This is plausible, but is it any more? Is he not arguing away the constitution from dangers and difficulties which must exist under every hypothesis, and from which his unlimited constitutional despotism will not protect us. Hear his own words, page 28 and 29—"Undoubtedly that *absolute* power which the constitution of these kingdoms entrusts to Parliament, will have this physical extent. A Parliament may abuse its sovereign authority; but it does so at the risque of entitling the subject to throw off that government which has become an instrument of oppression, and recur to first principles, to resistance, and insurrection. Parliamentary authority has no limits known to the constitution: by the principles of that constitution it is *boundless*: but it is exercised at the peril of those to whom it is entrusted; and they will be cautious how they commit that extreme abuse, which will constructively subvert the constitution, efface all artificial regulations, and, letting in the paramount rights of human nature, overwhelm the powers of Parliament in revolution."

Does he not then admit in terms that the sovereignty of the legislature may be abdicated by abuse, and who but the people are to judge when abuse shall become so flagrant and outrageous as to entitle the subject to throw off their government? If then it can be consistent with the nature and existence of government that the people (I am no demagogue, yet I do not hate the term) shall retain a right to judge of the abuses of the power admittedly vested in government, and in extreme cases, (of which alone the people can judge) to dissolve that government, why should it be inconsistent with government that they should set limits to its despotic nature, and judge when these limits are transgressed? In my opinion the reservation of the latter right to the people is much less dangerous than the former, in as much as it is easier to decide whether a constitution be subverted, than whether a severe law be not necessary. Will it be said for instance, under our constitution, that the imposition of taxes, intolerable to the people, would justify a resort to what Mr. Smith calls the paramount rights of human nature, but that the transfer of the whole power of the legislature to a single despot, which would imply the utter extinction of all legal right of property, would not justify it? I protest this subject appears to me to be so plain, and simple, that I fear to obscure it by attempting to illustrate it. Man is not absolved from the obligations of morality, or I should hope the influence of conscience, when he becomes a legislator—he is still responsible to God and his conscience. I know Mr. Smith too well not to be convinced that he will not deem it an idle waste of time, to prove that parliament has no right to transgress its limits, even though the question were purely a moral question, and the sanctions lay solely

within the bosom of each individual member of parliament.

Mr. Smith ought to know the distinction between excess and abuse of jurisdiction: The power that exceeds its jurisdiction is wrong, and culpable whatever may be its decision; the same power may be culpable by a bad decision, even when it has a clear right to decide. In the former case it never can be right—in the latter it may be wrong. I have a right to dispose of my own money as I please, yet I may abuse that right, and act against conscience; but I have no right to seize upon and apply the money of another man without his consent, even to the most laudable and salutary purposes; or having received it in trust for one purpose to convert it to another, even though the latter be manifestly preferable to the former. Man either individually or collectively, in whatever character, whether as a subject or a legislator, is not left at liberty to pursue every end which he may conceive to be good, by every means which he may conceive to be expedient. The dominion of God would be invaded by so arrogant an assumption of discretion, and human morals would become the caprice of individuals, or the dictate of tyrants.

I hope it is sufficiently clear, that constitutional limits may be set to the supreme power of a state, which it never can justifiably transgress without the consent of the subject. It remains to shew that such limits are set in our constitution, and that for our parliament to enact an Union would be to transgress them.

I confess it appears to me clear, that to do this I have nothing to do but to shew that we have a constitution; for as I have always understood the term and the thing, they necessarily imply limitation, and I have been accustomed to think that our government has been called and considered a limited government, not so much from its mixed form, as its limited and defined capacity. I can well conceive a limited monarchy, where there are neither Lords nor Commons, though I readily admit that such a system could not long endure; the monarch would either break down the fences against his despotism, or bodies would arise in the state with a view or under the pretence of protecting them, who would gradually acquire a permanent existence, and divide and share the sovereign power.

Mr. Smith asserts in page 43, "that a limitation of the competency of parliament is exactly conformable to the doctrine preached by Payne, and practised by the French;" but if I do not grossly mistake, Tom Payne agrees with Mr. Smith in denying that there is any limitation to the competency of our parliament, and from that false assumption derives the principal topics of his slanderous misrepresentation of a system which he did not understand.

Mr. Smith and the Minister use many arguments from experience, and from supposed absurdities which would follow from the popular doctrine. The limits of this paper will not permit me to follow them in detail; I can only suggest principles, and leave their application

to the public. It has already been fully proved by many writers that the Union with Scotland is the only case that bears any resemblance to the present, and that that case stands distinguished from it in those particulars which most govern the question; but surely when the question is, whether a government be morally competent to do a certain act, it may be a strong fact, but it will be a feeble argument to shew that such things have been done. The moral competency of the supreme power to commit every excess and every abuse under which human nature has ever groaned, might be established by similar reasoning. Such researches may be useful to shew to what degree a people will submit, or tyranny may venture, but they never can alter the nature of truth and justice, or render that right which in principle and reason is wrong.

But Mr. Smith, (with whom the Minister agrees in every particular) if I rightly understand him, would infer the moral competence of the British parliament to do every act upon which they have ever ventured from the admitted validity of the laws which have passed since the changes have taken place, which they have made without the intervention or consent of the people: And if his reasoning at all applies, he would infer from the obligatory force of these laws at present, that the parliament must have been *morally competent* to enact them at their commencement. Amongst various other passages I refer to the following in Mr. Smith's pamphlet, page 23.—“The train of mischiefs which follow this impeachment of the Scotch Union are very numerous. If that incorporation was invalid, what attention, or observance, is due by Scotland to any legislative ordinances which have been made since 1707? How is Britain, how is England, bound by the acts of that unconstitutional assembly, misnamed the British Parliament, which has been sitting at Westminster for the last ninety years? Acts wherein, in one house forty-five, in the other sixteen, *strangers* conspired; and for aught we know, (by constituting the majority) brought them about. What becomes of the force of that act of renunciation, which passed in 1783, and which Ireland has vainly mistaken for the corner-stone of her liberties, and Constitution?”

Now, even though I were to admit that the Scotch Union was imposed upon Scotland without the previous consent of the nation, as is attempted here, and to deny the *moral competency* of the Scotch, or of the English parliament to enact such a measure in such a way, the consequences apprehended by Mr. Smith would not follow. Mr. Smith is a man who not only reads, but reflects; need I ask him whether laws have not often been wrongfully imposed, which have been rightly continued? Need I ask him whether subsequent assent or acceptance may not give validity to systems originally founded in fraud or in force, and does the author of the fraud or the force stand justified by the success of his originally unwarrantable aggression?

I apprehend Mr. Smith's reasoning would tend much

more to undermine our laws than mine, because I am persuaded that many of our most valuable institutions can be traced back to causes and sources which no eloquence or sophistry could justify. I do not assert that a dissolution of government must practicably follow, even from the most violent *excess* or *abuse* of the supreme power; the people may if they please submit to the new order of things which is established, but it appears to me to be perfectly clear that when the supreme power, who are only trustees, think proper of their own authority to displace the constitution which the people acquired, inherited or adopted, or essentially to alter its nature; a moral right, and I will add, a religious duty devolves upon the people to decide whether they will submit to what is substituted, or supply the ruins of their constitution by a new fabric of their own choice. In deciding upon whether they will exert this right, they owe nothing to their governors, who have virtually abdicated their authority; but they owe much to themselves and more to their posterity. They ought unquestionably to weigh maturely the amount of the evil that would probably result from exerting even an unquestionable right; if the exercise of it should be resisted by force; but in making this estimate they should remember the sacrifices which their ancestors have made, and what is due to their posterity. They should bear in mind that there is no evil really heavy and durable that is not of a moral nature, and if the outrage be glaring, and the injurious consequences numerous and heavy, they should not too readily succumb under difficulties and dangers. But if after exerting a moral discretion soundly, they submit to and accept the new system which is chosen for them, the new laws which result there from may have obligatory force without violating a single principle which I have asserted. Beside the obligatory force of laws may depend upon other considerations than the fountain from which they *originally* flowed. Length of time must necessarily tend to give validity to institutions to which a people have long submitted, under which property has been acquired and transferred, and from which mutual rights and mutual duties have resulted.

It is said, that the doctrine I lay down will go to the denial of the competency of parliament to enact even the minutest reform in any part of the legislative system. To this I answer, that it is no objection to any system, moral or political, that the exact horizon between right and wrong is somewhat obscure, and that cases might be put, difficult to be decided upon. Laws manifestly calculated to restore and invigorate parts of our constitution, which may have fallen into decay or abuse, even though they somewhat trench upon the forms of that constitution, as it exists in practice, may be justifiably enacted by the supreme power without consulting the people, even according to the utmost rigor of my doctrine.

But we are with more flippancy than fairness asked where are these limitations to be found, and how is the popular sentiment to be collected? They have

sprung from solemn transactions, which are recorded in our histories; which have been commented upon, by writers whose works almost every man reads; and some of which are of so momentous and striking a nature, that tradition would have handed them down, if printing had never been discovered.

But these pretended difficulties, cannot, with the slightest colour of fairness, be resorted to upon the present occasion. We do not require that limitation which Mr. Locke I think truly says, necessarily flows from the end and nature of every legislature, namely, that they have no right to transfer the power of legislation—a limitation, which Mr. Smith *modestly* denominates *filly*, and which Mr. Paine, would, no doubt say, does not exist in *our government*, in consequence of its despotic nature.

If ever there was in any country a solemn settlement between the people and their government, and between two nations, it was the establishment of the independent Irish Constitution of 1782. The people of Ireland almost as one man, called upon their Parliament to assert the liberties of the nation, and their own independence; and the British Parliament, by solemn, recorded, and reiterated acts, recognized the justice of our claims; and gave every security which an independent nation can give to another, without the interference and guarantee of some third power, that our separate, independent, legislative right, should never again be invaded or questioned.

It requires the utmost extent of the modern despotic doctrine of the minister, to justify the annulling of such a settlement, without the national consent. In principle our parliament would have the same *moral competency* to depose itself, and transfer its transcendent powers to the British parliament without any mixture of Irish representation; and in practice, in my opinion, it would equally consult the prosperity of Ireland, and much better provide for the liberties of the subjects of the imperial legislature. Is it not equally clear, that the people wish to retain their constitution, as that they were zealous and united in acquiring it? Is this a question upon which any honest man can doubt how the public sentiment is? Shall we be told that the intellect of the nation is for the measure? If it be, and that its advantages are so weighty and manifest, why does not this superiority of intellect convert the nation to its own happiness and prosperity? Is the necessity of carrying the measure, so urgent, that the consciences of our legislators cannot be at rest, until they impose it upon us? That they cannot wait until superiority of talent, enlisted on the side of truth and reason, shall convince the nation? Until the people of Ireland, dull of intellect as they are, and overrun with prejudices, shall learn to despise their patriots of 1782, and become converts to the new patriots of 1799, who have some of them been so miraculously converted themselves? This measure never can be investigated in detail, by the people at large, or all its bearings, civil and commercial,

minutely examined. But there are some of its features, too prominent and frightful to be disguised or reconciled to the feelings of Irishmen. All the varnish of Mr. Pitt, cannot conceal, or recommend them. I would send the project forth amongst the people, with no other commentary than his speech, and abide the event. Whatever effects may be produced by his menaces and his bribes, he never can win their affections, and procure their rational assent, by so flimsy a performance as that which is gratuitously circulated, at its full value.

The nation cannot be influenced by his eloquence or his sophistry; until they believe that power and right are one and the same; that 554 resident members will not totally overbear 100 absentees; that the national prejudices of centuries, will vanish at his command; that virtual dependence will be wealth, altho' actual dependence was beggary; and that to relinquish a system which has been productive of prosperity beyond our most sanguine hopes, is a duty which we owe to ourselves and our posterity.

Whenever these things are reconciled to the people, and that they call for the measure, I shall acknowledge the moral competency of Parliament to enact it; but until they do, tho' I may be compelled to submit to the physical force of the British or the Irish government, with which it is contended that their moral competence is commensurate, I never can change opinions founded in the immutable nature of things, and whose final sanctions lie out of the reach of any human power.

V.

TRANSLATION OF VIRGIL'S FOUR CELEBRATED LINES.

Sic vos non vobis nidificatis aves.

Not for yourselves, ye pigeons, did ye build
Snug nests in town, by bats shall they be fill'd.

Sic vos non vobis vellera fertis oves.

Not for yourselves, ye well-sheer'd silly yeos,
Ye've frisk'd in fields, and worn your pretty clothes.

Sic vos non vobis mellificatis apes.

Not for yourselves, ye merchants, do ye thrive,
A ruthless hand shall rob your honied hive.

Sic vos non vobis fertis aratra boves.

Not for yourselves, ye stupid Bulls ye plough,
Another Bull shall tread the grain ye sow.

Vide *Pitt's Virgil*.

TREBOR.